

Decision

Matter of: Graphic Creations, Inc.

File: B-252780

Date: August 26, 1993

DIGEST

Claimant may not be paid on a quantum meruit basis for printing services performed for the Internal Revenue Service (IRS) without a valid contract since the services could not have been lawfully procured by the agency in light of two statutory prohibitions. See section 308(a) of the Legislative Branch Appropriations Act, 1990, Pub. L. No. 101-163, 103 Stat. 1041, 1065 (Nov. 21, 1989), and 44 U.S.C. § 501 (1988).

DECISION

The Internal Revenue Service (IRS) requests an advance decision as to whether it may pay the claim of Graphic Creations, Inc., for \$1,194.59 for printing services on a quantum meruit basis.¹ For the following reasons, we conclude that the IRS may not pay for the services rendered by Graphic Creations, Inc., on a quantum meruit basis because of two statutory prohibitions.

The IRS report states that the Government Printing Office (GPO) had established a contract for the IRS district office in Ft. Lauderdale, Florida, with Graphic Creations, Inc., for government printing orders. That contract expired on August 31, 1990, rather than September 30, 1990, as many other government contracts do. Not knowing that the contract had expired, an IRS employee, who was not a contracting officer, but who usually had the responsibility for requesting printing services from that corporation, requested additional printing services on September 19, 1990.

The IRS report also states that the vendor, Graphic Creations, Inc., acting in good faith, competently performed

¹This matter was submitted by Mr. Jim Everitt, Regional Fiscal Management Officer, Department of the Treasury, Internal Revenue Service, Atlanta, Georgia.

the printing services, and the IRS admits that it received and accepted the printing order, which had a fair and reasonable value of \$1,194.59. The record shows that the IRS requested that the GPO ratify these printing services. However, the GPO refused to do so for legal reasons, which were not in any way related to the quality of the printing services provided by Graphic Creations, Inc.² The IRS report also notes that the IRS has taken measures to prevent the recurrence of such mistakes in the future.

In order to recover for services rendered in the absence of a valid written contract under the equitable principle of quantum meruit before our Office, a claimant has the burden of proving that the following four elements are present: (1) the services would have been a permissible procurement had the formal procedures been followed; (2) the government received and accepted a benefit; (3) the person seeking payment acted in good faith; and (4) the amount claimed represents the reasonable value of the benefit received. Mohawk Data Science Corporation, 69 Comp. Gen. 13 (1989); Robert U. Bregman, B-214529, Jan. 19, 1988; 64 Comp. Gen. 727 (1985).

With certain limited exceptions not relevant here, 44 U.S.C. § 501 (1988) requires that all printing and binding for the government must be done at the Government Printing Office, unless the Joint Committee on Printing has granted a waiver from that requirement. Furthermore, with certain limited exceptions which are not relevant here, section 308(a) of the Legislative Branch Appropriations Act, 1990, provides that:

"None of the funds appropriated for fiscal year 1990 by this Act or any other law may be obligated or expended by any entity of the executive branch for the procurement from commercial sources of any printing related to the production of Government publications (including forms), unless such procurement is by or through the Government Printing Office.³

Our Office does not have the legal authority to waive the requirements of the two statutes cited above, and equitable relief is not available for firms that have provided printing services in violation of the statute, irrespective of good faith and benefit to the government, because general principles of equity will not be applied to frustrate the

²Letter from the Government Printing Office to the Internal Revenue Service, dated June 18, 1992.

³Pub. L. No. 101-163, 103 Stat. 1041, 1065 (Nov. 21, 1989).

purpose of a statute or to thwart public policy. See,
respectively, Drone-Mueller & Associates, B-251481, Feb. 23,
1993; The Daily Sentinel, B-195566, Mar. 17, 1980, 80-1 CPD
¶ 202.

Accordingly, we cannot authorize payment of the claim of
Graphic Services, Inc., on a quantum meruit basis, and, as
noted above, the GPO has declined to ratify the printing
services. We understand, however, that the Joint Committee
on Printing will consider granting a retroactive waiver in
some circumstances, and the IRS may request such a waiver in
this case. See Drone-Mueller & Associates, B-251481, supra.

for *Milton J. Auster*
Comptroller General
of the United States